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NO. 73-1462

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

MARK WHITE, ET AL., APPELLANTS

V.

DIANA REGESTER, ET AL., APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

MOTION TO AFFIRM

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April 24, 1974

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TO THE HONORABLE UNITED STATES SUPREME COURT:

Appellees, Escalante, et al (District 32-Tarrant County, Texas) move this Court to affirm the judgment and opinion of the United States District Court for the Western District of Texas entered on January 28, 1974.

NATURE OF THE CASE

The three judge court below held that the use of a nine-member multi-member district in State House of Representative District 32 unconstitutionally denied blacks and browns in such district effective participation in the electoral process. Injunctive relief was granted by the court below ordering it reconstituted into nine single-member district

On February 2, 1974, Justice Powell granted a stay of the District Court order as to District 32 and also as to seven other smaller multi-member districts throughout Texas.

Appellants gave notice of appeal on Janaury 30, 1974.

EVIDENCE OF UNCONSTITUTIONAL SUBMERGENCE OF MINORITIES IN DISTRICT 32 IS STRONG ENOUGH SO THAT NO SUBSTANTIAL QUESTION IS PRESENTED FOR REVIEW AS TO THIS DISTRICT.

A. Political Complexion of District 32

District 32, a nine-member multi-member district of the Texas House of Representatives, has a total population of 675,000 persons. 80,000 of these are black, and 40,000 of these are brown. (Plaintiff Escalante Exhibit 1a, 2a, and 2b)[1]

The ideal size of a single-member district in District 32 is 75,045. The 120,000 blacks and browns residing in District 32 have never been able to elect a minority candidate to the House of Representatives from that district, or its predecessor, Tarrant County. (District 32 is wholly contained within Tarrant County.). (p. 19, Oral Deposition - Betty Fischer). No blacks or browns have ever been elected in other county-wide races in Tarrant County. (pp. 108-110, Oral Deposition - J. W. Sifford).

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[1]Record references are to the original record below. "Tr." refers to transcription of oral testimony.

In the entire history of Tarrant County, only three blacks and two browns have ever sought nomination for State Representative in the Democratic Primary, nomination in which has, without exception, been tantamount to election. (pp. 18, 19, Oral Deposition - Betty Fischer; pp. 72, 73, 78, Oral Deposition - J. W. Sifford). Prior to 1960, no blacks or browns ran for the House of Representatives. (p. 17, Oral Deposition - Betty Fischer; pp. 72, 73, Oral Deposition - J. W. Sifford). The five minority candidates who ran after 1960 constituted 3.6% of the total 136 candidates who ran from 1960 to 1972 in the Democratic primary for the House of Representatives, although minorities represent 18% of the population of such district. (Plaintiff Escalante Exhibit 4).

District 32 is the largest remaining multi-member district for the House of Representatives in the State of Texas.

B. Exclusion of Blacks and Browns from Slating Process

The two basic slate-making groups in District 32 - "Seventh Street" (business slate) and the labor coalition - effectively control the Democratic primary for the House of Representatives (pp. 48, 49, 76, Tr. - Betty Fischer).[2]

Two of the black candidates who have run in recent years, Webber and Graves, have been slated by the labor coalition on a token basis,

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[2]No Republican has ever been elected to the House of Representatives from District 32. (p. 20, Oral Deposition - Betty Fischer; p. 29, Oral Deposition - R. C. Johnson).

but neither got much support from that group, nor was either recruited by the labor coalition. (p. 143, Tr. - Betty Fischer; pp. 21, 22, 49 - 51 - Oral Deposition - J. W. Sifford; p. 87, Oral Deposition - J. W. Sifford). One of the two blacks, Graves, was slated partly because it was felt a black on the slate would attract black votes for other white slated candidates. (pp. 30-32, Oral Deposition - J. W. Sifford). Other than these two, the labor coalition never slated blacks for the Democratic primary. The "Seventh Street" slate-maker have never supported blacks or browns for the legislature (p. 76, Oral Deposition - J. W. Sifford; p. 134, Tr. - Betty Fischer).

The labor coalition discourages politically promising and ambitious black persons from running for the legislature. (pp. 34, 35, 36, 52 - Oral Deposition - J. W. Sifford; pp. 22, 23, Oral Deposition - R. C. Johnson; pp. 38, 39, Oral Deposition - J. W. Sifford; pp. 23-26, Oral Deposition - R. C. Johnson; pp. 94, 95, Oral Deposition - J. W. Sifford; p. 70, Oral Deposition - J. W. Sifford).

Furthermore, blacks have been almost totally excluded from the ranks of the more powerful slate-makers in the labor coalition (pp. 17, 18, Oral Deposition - R. C. Johnson).

C. <u>Unresponsiveness of Present Members of Delegation from District 32</u>

Responsiveness of the present Tarrant County delegation to the particularized needs of blacks and browns has not been good (p. 101, Oral Deposition - J. W. Sifford). The primary failure of the District 32 delegation is highlighted by the failure of any members to originate and sponsor legislation of particular interest to minority groups (pp.

121-122, Tr. - Betty Fischer). Specific areas of failure include the lack of day care legislation, the lack of open-housing laws, the lack of civil rights legislation generally, the lack of legislation promoting consistent integration of the schools, the lack of legislation prohibiting employment discrimination of the basis of race by employers with less than 15 employees, and the lack of legislation guaranteeing non-discriminatory access to the facilities which are not engaged in interstate commerce. (p. 121-Tr. - Betty Fischer; p. 130, Tr. - Betty Fischer; p. 211, Tr. - Gibson Lewis; p. 131, Tr. - Betty Fischer; p. 211, Tr. - Gibson Lewis).

In fact, it was the Tarrant County delegation to the House of Representatives which effectively blocked single-member districts in Tarrant County in 1973. (p. 243, 245, 246, Tr. - Ed Harris). The Tarrant County delegation was so unresponsive to the cries of blacks for single-member districts that a number of Fort Worth blacks who felt a need for single-member districts contacted Rep. Paul Ragsdale of Dallas, himself newly-elected from a single-member district, about trying to get single-member districts for the House of Representatives in Tarrant County (p. 491, Tr. - Paul Ragsdale).

D. Legacy of Racial Discrimination

The legacy of past racial discrimination in Texas need not be repeated here, nor is the present adverse effect on minorities of such legacy a debatable question in Texas.

E. Factors Aggravating Unconstitutional Submergence of Minorities

The diluting effect of multi-member districts on the votes of blacks and browns in Tarrant County is enhanced because there is a majority vote requirement, there is a place requirement, and there is no provision for at-large candidates running from a particular geographic sub-district.

F. Conclusion

It is clear that Appellees have satisfied the test set forth by this Court in White v. Regester, 41 U.S. Law Week 4885 (June 19, 1973), and have produced ample

> "evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question - that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice."
> 41 U.S. Law Week at 4889.

WHEREFORE, Appellees respectfully request that this Court affirm the decision of the three-judge district court below since the findings of fact made by that Court are not clearly erroneous.

Respectfully Submitted,

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